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Attorney for Plaintiff PRO-TRACKER, LLC

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

PRO-TRACKER, LLC, an Idaho limited
liability company,)
)
)
Plaintiff,)
)
)
)
IRON MOUNTAIN PRODUCTS LLC, a)
Kansas limited liability company,)
)
Defendant.)

**RESPONSE TO
ORDER TO SHOW CAUSE**

Civil No. 2:15-cv-00007 DBP

Magistrate Judge: Dustin B. Pead

Plaintiff Pro-Tracker, LLC ("Plaintiff") has entered into an Agreement, submitted herewith as Exhibit A, with Iron Mountain Products LLC ("Defendant") to maintain the *status quo* between the Parties regarding the above captioned action while the Parties determine if settlement of the present action is possible. Plaintiff acknowledges that service of the Complaint and summons has not occurred in view of the Agreement of Exhibit A.

The Agreement is submitted herewith to keep the Court and the public appropriately apprised of the status of this dispute between the Parties. Plaintiff recognizes that the present action will be dismissed without prejudice.

DATED this 29th day of May, 2015.

CLAYTON, HOWARTH & CANNON, P.C.



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Attorney for Plaintiff,
PRO-TRACKER, LLC

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CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing **RESPONSE TO ORDER TO SHOW CAUSE** to be served, via first class mail, postage prepaid on this 29TH day of May, 2015, to:

Thomas B. Luebbering
Hovey Williams LLP
10801 Mastin Boulevard, Suite 1000
Overland Park, Kansas 66210

_____

EXHIBIT A

This Agreement is entered into between Plaintiff Pro-Tracker, LLC, (APro-Tracker@) and Defendant Iron Mountain Products LLC (individually AIron Mountain@ and collectively Athe Parties@) to maintain the *status quo* between the Parties regarding the above captioned action while the Parties determine if settlement of the present action is possible. The Parties understand

that this paper may be, but is not required to be, filed with the Court. The effective date of this Agreement shall be the date on which it is executed by Iron Mountain, or its attorney, below.

RECITALS

A. Pro-Tracker filed the above-captioned action (The Action) against Iron Mountain on January 5, 2015 alleging, *inter alia*, that Iron Mountain infringed Pro-Tracker's patent rights in U.S. Patent No. 8,425,354 (hereinafter The '354 patent).

B. The 120 day time period provided by the Federal Civil Rules of Civil Procedure to serve a summons and the complaint on Iron Mountain in the Action expires on May 5, 2015.

C. The Parties are desirous to avoid serving the complaint in the Action in order to avoid the costs and expenses of litigation at the present time.

D. The Parties are further desirous to explore the possibility of discussions regarding the '354 patent and the industry in which the Parties compete.

TERMS

In consideration of the mutual promises, covenants, and undertakings contained herein, and intending to be legally bound hereby, the Parties hereto agree as follows:

1. Pro-Tracker agrees not serve Summons and Complaint on Iron Mountain in the Action. The Parties understand that the Action may be dismissed, *sua sponte*, by the Court for failure to serve the Summons and Complaint.
2. Iron Mountain agrees to forbear from initiating any action of any kind, judicial or administrative, in any jurisdiction or forum, regarding the '354 patent or U.S. Patent Nos. 8,393,982 or 8,974,326 or any related application or patent, including filing a declaratory

judgment action against Pro-Tracker, for a period of one year to May 5, 2016. The obligations of this paragraph shall immediately expire should Pro-Tracker re-file the Complaint or initiate any other legal action against Iron Mountain related to the '354 Patent or U.S. Patent Nos. 8,393,982 or 8,974,326 before May 5, 2016.

3. Iron Mountain warrants that it has not already filed an action of any kind as specified in the immediately preceding paragraph.

4. In the event that Iron Mountain, or any party Iron Mountain controls, has already filed, or does file, any action of the type or kind described herein, Iron Mountain agrees that (i) it voluntarily consents, for itself and any party it controls, to a motion to dismiss or transfer jurisdiction to Utah; (ii) that this Agreement alone shall constitute evidence of Iron Mountain's consent, and the consent of any party Iron Mountain controls, to dismissal or transfer; and (iii) it will reimburse Pro-Tracker for all costs and attorney's fees incurred in bringing the motion to dismiss or transfer.

5. This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and may not be amended or modified except by agreement in writing signed by the Parties.

6. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and each of their respective agents, heirs, successors and assigns.

7. Each of the Parties hereto represent that they have full authority to bind their respective entities by this Agreement.

8. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah without application of its choice of law rules, and the Parties consent to

the jurisdiction of the state and federal courts of Utah for the enforcement of the rights and obligations arising between them regarding this Agreement.

PRO-TRACKER, LLC

By: 

5/5/15
Date

Name: Michael D. Ferguson

Title: Manager

COUNSEL FOR PRO-TRACKER, LLC

Grant R. Clayton
Clayton, Howarth & Cannon, P.C.
6985 Union Park Center, Suite 200
Cottonwood Heights, Utah 84047

IRON MOUNTAIN PRODUCTS LLC

By: 

May 1, 2015
Date

Name: Dennis Steinman

Title: managing member CEO

COUNSEL FOR IRON MOUNTAIN
PRODUCTS LLC

Thomas B. Luebbering
Hovey Williams LLP
10801 Mastin Boulevard, Suite 1000
Overland Park, Kansas 66210